

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-291-C - ORDER NO. 2003-163

MARCH 19, 2003

IN RE: Application of Budget Phone, Inc. for a) ORDER GRANTING
Certificate of Public Convenience and) CERTIFICATE FOR
Necessity to Operate as a Reseller of) AUTHORITY TO
Interexchange Telecommunications Services) PROVIDE RESOLD
within the State of South Carolina; and for) INTEREXCHANGE
Alternative Regulation) TELECOMMUNICATIONS
) SERVICES AND
) MODIFIED ALTERNATIVE
) REGULATION

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Budget Phone, Inc. (Budget Phone or the Company) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of interexchange telecommunications services within the State of South Carolina. Subsequent to the filing of the Application, Budget Phone, by way of a Motion for Expedited Review, from the Company's counsel, requested that the matter be scheduled for final disposition by the Commission at its earliest opportunity, rather than on a scheduled hearing date. Additionally, the Company requests that the Commission regulate Budget Phone's long distance business services, consumer card services, operator services and private line service offerings in accordance with the principles and procedures established for relaxed regulation in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Budget Phone is a corporation organized under the laws of the State of Louisiana and is authorized to transact business within the State of South Carolina by the Secretary of State. The record reveals that Budget Phone was granted a Certificate of Public Convenience and Necessity to provide resold local exchange telecommunications services within the State of South Carolina in Docket No. 1999-512-C, Order No. 2000-289, dated March 24, 2000. Budget Phone's corporate headquarters are located in Shreveport, Louisiana.

The Commission's Executive Director instructed Budget Phone to publish a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to provide notice of the Application to any interested parties and to advise interested parties of the manner and time in which to file pleadings to participate in the docket. Budget Phone filed Affidavits of Publication as proof that it had complied with the instructions of the Executive Director. No Petitions to Intervene, letters of protest, or comments were received by the Commission with regard to the instant Application.

MOTION FOR EXPEDITED REVIEW

Subsequent to notice of the Application being published and after the return date expired with no intervention or opposition, Budget Phone requested expedited review and waiver of a hearing in the matter. Budget Phone also filed the verified testimony of Art Magee, Comptroller of Budget Phone, to support the Application. The matter was then brought to the Commission for consideration.

Upon consideration of Budget Phone's request for expedited review (waiver of hearing), the Commission finds that expedited review should be granted. In its request, Budget Phone waived its right to a formal hearing. The Commission finds that notice of the Application was properly afforded to the public and that no interested person sought to become a party to the proceeding. The Commission finds that procedural due process was afforded in this matter and further finds that Budget Phone made a knowing waiver of a formal hearing. Therefore, the Commission will consider the Application in the context of its regularly scheduled weekly meeting, with court reporter present, and for purposes of the expedited review, the Commission will deem the examination of the Application and verified testimony during the course of the Commission's regularly scheduled meeting with court reporter present as a hearing on this matter.

According to the Application and the verified testimony of Art Magee, Budget Phone is a Louisiana corporation that has received authorization to transact business within the State of South Carolina. Budget Phone seeks authority to operate as a reseller of intraLATA and interLATA intrastate telecommunications services to the public on a statewide basis. The Company seeks authority to offer on a resale basis within South Carolina intrastate, interLATA and, to the extent authorized by the Commission, intraLATA direct-dialed services including (1+) service, flat rate service, 800 inbound service, travel cards, and prepaid calling cards. The record reveals that Budget Phone was granted a Certificate of Public Convenience and Necessity to provide local telecommunications services in South Carolina in Docket Number 1999-512-C, Order Number 2000-289, dated March 24, 2000. As a switchless reseller of long distance

services in South Carolina, Budget Phone intends to utilize Qwest as its underlying carrier.

Mr. Magee also presented testimony regarding the Company's managerial, technical, and financial resources and ability to provide the telecommunications services proposed in its Application. According to the testimony, Budget Phone's personnel represent a broad spectrum of business and technical disciplines, possessing many years of individual and aggregate telecommunications experience. R. Daniel (Smokey) Hyde, Jr. is the Chairman of the Board. The record reveals that Mr. Hyde entered the paging business in 1988. He started with zero subscribers and in ten years he developed a subscriber base of 40,000. Mr. Hyde's paging business grew to a total of nine retail outlets where prepaid paging, prepaid cellular, prepaid home phone, and prepaid long distance were marketed. The paging company was sold on May 1, 1998, and Mr. Hyde now devotes full time effort to Budget Phone, Inc. and Snappy Phone of Texas, Inc. Mr. Jerry W. Black is the President of the Company. From 1997 to 2001, Mr. Black owned a successful prepaid cellular phone, paging, and home phone-based business in Marshall, Texas. At the same time, according to the record, Mr. Black was the retail manager for two successful retail stores that sold telecommunications products and services in Longview and Tyler, Texas for Budget Phone, Inc. Mr. Tony M. Cason is the Company's Operations Manager. In 1989, Mr. Cason entered into the cellular wireless industry where he owned and operated a successful cellular retail store. Within eight years, Mr. Cason's subscriber base had grown to over 10,000. In November 1996, Mr. Cason joined Budget Phone, Inc. as Operations Manager where he designed,

organized, staffed, and successfully developed a prepaid cellular switching system in East and Central Texas and in South Louisiana.

Regarding the Company's financial resources to provide telecommunications services in South Carolina, the Company submitted financial statements dated December 31, 2001. These statements show Budget Phone's current assets as of December 31, 2001, as \$7,510,684.44. As of December 31, 2001, the Company's current liabilities were \$2,307,085.24. The Company's retained earnings were also positive at \$1,711,841.68.

Budget Phone also requests a waiver of 26 S.C. Code Ann. Regs. 103-610, which requires books and records to be kept in the State of South Carolina. The Company desires to keep its books and records at its principal place of business. The principal business address, according to the Application, is in Shreveport, Louisiana.

Budget Phone states a desire to have its long distance business services, including consumer card services, operator services, and private line services offerings regulated by modified alternative regulation. Budget Phone requested that all of its long distance business service offerings be regulated pursuant to the procedures described and set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. It is Budget Phone's intent by this request to have its long distance business services regulated in the same manner as this Commission has permitted for AT&T Communications of the Southern States. Alternative regulation has now been modified by this Commission through the re-imposition of rate caps with regard to certain "operator assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have

not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls.

Upon review and consideration of the Application, the verified testimony of Mr. Magee, and the applicable law, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Budget Phone is organized as a limited liability company under the laws of the State of Louisiana and has been authorized by the Secretary of State to transact business within the State of South Carolina.

2. Budget Phone is a provider of local telecommunications services and wishes to provide long distance services in South Carolina.

3. Budget Phone has the experience, capability, and financial resources to provide the services as described in its Application.

4. The Commission finds that Budget Phone should be granted a waiver of 26 S.C. Code Regs. 103-610 requiring that reports and records be maintained within the State of South Carolina.

5. The Commission finds it appropriate for Budget Phone's interexchange telecommunications services to be regulated in accordance with procedures established in Order Numbers 95-1734 and 96-55 in Docket Number 95-661-C, as modified by Order Number 2001-997 in Docket Number 2000-407-C.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Budget Phone to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for Budget Phone for its resale of interexchange services which includes only maximum rate levels for each residential tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. Budget Phone shall not adjust its interexchange residential rates below the approved maximum level without notice to the Commission and to the public. Budget Phone shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16,

1993). Any proposed increase in the maximum rate level for interexchange residential services reflected in the tariff, which would be applicable to the general body of the Company's subscribers, shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 2002).

4. The Commission adopts a rate design for the interexchange business services of Budget Phone consistent with the principles and procedures established for alternative regulation of long distance business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C and modified by Order No. 2001-997. Following the modification of the alternative regulation by Commission Order No. 2001-997, this form of regulation is commonly referred to by the Commission, Staff, and others as "modified alternative regulation."

Under the Commission approved modified alternative regulation, the business service offerings of Budget Phone, including consumer card services, operator services and private line services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 issued in Docket No. 2000-407-C, this Commission has modified the previously approved alternative regulation by the re-imposition of rate caps with regard to certain "operator-assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such

calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme known as modified alternative regulation, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Budget Phone also.

5. If it has not already done so by the date of issuance of this Order, Budget Phone shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations. Further, Budget Phone shall file a copy of its Bill Form as required by 26 S.C. Code Ann. Regs. 103-612.2.2 and 103-622.1 (1976) with its final Tariff.

6. Budget Phone is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

7. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. Budget Phone shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Budget Phone changes underlying carriers, it shall notify the Commission in writing.

9. Budget Phone shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Budget Phone shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.state.sc.us/forms. The title of this form is "Annual Information on South Carolina Operations for Interexchange Companies and AOS." This form shall be utilized by the Company to file annual financial information with the Commission. Commission gross receipts forms are due to be filed with the Commission no later than October first of each year.

10. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Budget Phone shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The

“Authorized Utility Representative Information” form can be found at the Commission’s website at www.psc.state.sc.us/forms; this form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

11. With regard to the origination and termination of toll calls within the same LATA, Budget Phone shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, the Company shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by order No. 93-462.

12. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each telecommunications company’s liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15th.

13. We grant Budget Phone’s request for a waiver of 26 S.C. Code Ann. Regs. 103-610, which requires books and records to be kept in South Carolina. The Company desires to keep its books and records at its principal place of business in Shreveport, Louisiana. We also find that it would be unusually difficult for the Company to maintain

its books and records in South Carolina as the Company's principal place of business is located in Louisiana. Further, we find that it is in the public interest that Budget Phone be allowed to maintain its books and records at its principal place of business. These books and records must be made available to the Commission at its request. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

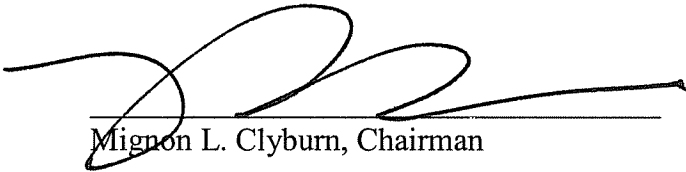
14. As a condition of offering prepaid long distance services, the Commission requires the Company to post with the Commission a bond in the form of a Certificate of Deposit worth \$5,000 drawn in the name of the Public Service Commission of South Carolina or a surety bond in the amount of \$5,000 which is payable to the Commission. The Certificate of Deposit shall be drawn on federal or state chartered banks or savings and loan associations which maintain an office in this state and whose accounts are insured by either the FDIC or the Federal Savings and Loan Insurance Corporation. A surety bond shall be issued by a duly licensed bonding or insurance company authorized to do business in South Carolina. This condition may be reviewed in one year.

15. If the Company sells its debit cards to retail establishments for resale of the debit cards, and the retailer of the debit cards deviates from the suggested retail price as filed in the tariff, or as approved by the Commission in a special promotion, then the Company will withdraw its cards from that retail outlet. This Commission strongly suggests that the Company enter into written agreements with its South Carolina retail


outlets regarding this policy of abiding by suggested retail pricing prior to the outlet marketing the card.

16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Mignon L. Clyburn, Chairman

ATTEST:


Gary E. Walsh, Executive Director
(SEAL)